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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,494	01/04/2006	Steinar Bjornstad	OSL-034	8273

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EXAMINER	
CURS, NATHAN M	
ART UNIT	PAPER NUMBER
2613	
MAIL DATE	DELIVERY MODE
09/24/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/563,494	BJORNSTAD, STEINAR	
	Examiner	Art Unit	
	NATHAN M. CURS	2613	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: *The amendments to at least claim 26 requires further consideration and/or search.* (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: *1-31*.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/NATHAN M CURS/
Primary Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because: Regarding claim 1 rejected under 35 USC § 112-1st paragraph, new matter, the applicant argues that the term "label" in claim 1 is about an entity bearing specific information and that the term label is a common word used for an entity bearing specific information, and points to paragraphs 0006, 0007 and paragraph 0062 and examples of label being an information entity. This argument is not persuasive. The issue for the new matter rejection is not about applying a common terminology, nor is it whether a wavelength label is an example of broader labeling (the paragraphs cited by applicant point to a "wavelength" being used as a label). The issue is that the original specification does not disclose an SOP actually functioning as a label indicating QoS value (i.e. the particular SOP value being actively verified in some way in order to identify a QoS value for a packet). The claim language "state of polarization...functions as a label indicating a QoS value for that packet" can only be either a non-limiting intended use, where the SOP is associated with a QoS value, but doesn't have any actual further active functionality as a label (i.e. the particular SOP value is never itself verified to determine the QoS value), or a limitation that the SOP can be positively verified in some way in order to identify a QoS value for a packet. It is the latter functionality that appears to the applicant's intent for the claim lanaguage, and is new matter.

Regarding claim 7 rejected under 35 USC § 112-1st paragraph, new matter, the applicant argues that the specification discloses separating header and payload using SOP, and using different SOPs for optical separation between QoS classes. This argument is not persuasive becuase the new matter lies in the particular "optical switching matrix" doing the separating. Claim 6 recites a core node adapted to demultiplex and separate packets by polarization and also recites an optical switching matrix and an electric switching matrix. This corresponds approximately to fig. 2 of the specification, where the polarization-based demultiplexing/separating has already happened by the time signals reach the optical switching matrix. The originally disclosed optical switching matrix doesn't "itself" do the polarization-based demultiplexing/separating; this is what is new matter for claim 7.

Regarding claim 12 rejected under 35 USC § 112-1st paragraph, enablement, the applicant argues that paragraph 0047 and 0072 support any change in SOP at the input of the PBS being used for indicating a change in the QoS value, with several changes in the amplitude of ch. 1 and ch. 2 at the PBS output, each defined to represent a certain QoS value. This argument is not persuasive. Regardless the applicant's argument of changes in amplitude representing QoS values (in fact, paragraph 0072 does not enabled the applicant's argument of each of different SOP ratios being decoded for different QoS values), claim 12 recites that more than two SOPs are "for signaling traffic" (not representing QoS values). Even in applicant's citations of the arguement, only two polarization signals are used to signal traffic. Signaling traffic with 3 or more SOPs is not enabled.

Regarding claim 14, the applicant's argument do not address the enablement problem described in the rejection; namely, the problem of no disclosure that establishes or explains how a change over time of two already distinct states of polarization could be the causal agent of a separation event that separates QoS.

Regarding the claims rejected under 35 USC § 103, the applicant argues that the combination has packets that are labeled with embedded non-optical QoS values. This argument is not persuasive. When the header and payload signals in the combination are in made into polarized optical format, their QoS information also becomes tied to the polarization. The applicant also argues that the application of Handelman's type polarization multiplexing, after the header and payload have been put on different polarizations, would result in conflict/intereference between header of one packet and the payload of a different packet. This is not persuasive because the different header and payload pairs in the combination would be separated in both time and polarization, and thus would not interfere (e.g. header1-polarization1 multiplexed with header2-polarization2, followed by payload1-polarization2 multiplexed with payload2-polarization1). Also regarding the "doubling bandwidth" goal of Handelman, the multiplexing teaching from Handelman is relevant as prior art regardless of any of Handelman's specific concerns about achieveing exactly double bandwidth. The use of patents and patent application publications as references is not limited to what the patentees or applicants describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain..